

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LISA ADAMS

Plaintiff,

v.

ROSS DRESS FOR LESS, INC.

Defendant.

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CIVIL ACTION NO. 4:20-cv-03969
JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant ROSS DRESS FOR LESS, INC., (“Ross”) hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removing the above-captioned case to the United States District Court for the Southern District of Texas, Houston Division. The grounds for removal are as follows:

I. Introduction

1. Plaintiff Lisa Adams (“Plaintiff” or “Adams”), at the time this action was commenced, was, and still is, a resident and a citizen of Texas. *See* Exhibit A at p. 2.

2. Defendant Ross, at the time this action as commenced, was, and still is, a resident and citizen of Virginia and California.

3. On or about April 23, 2020, Plaintiff commenced a lawsuit in the 164th Judicial District Court of Harris County, Texas, Cause No. 2020-25339, styled *Lisa Adams v. Ross Dress for Less, Inc.* Plaintiff claims that on or about December 20, 2019, she was an invitee at a Ross store, located at 10706 Eastex Freeway, Houston, Texas, when she tripped and fell on an uneven

entry rug on the ground of Defendant's establishment. *Id.* Plaintiff contends that she suffered severe injuries as a result of same. *Id.*

II. Grounds for Removal

A. Complete Diversity of Citizenship Exists Between the Parties and the Amount in Controversy Exceeds \$75,000.00

4. Plaintiff is a citizen and a resident of Texas. Ross is a citizen and a resident of Virginia and California. Thus, the parties are completely diverse. *See* 28 U.S.C. § 1332(a).

5. Further, Plaintiff is seeking damages in excess of \$75,000.00. In particular, Plaintiff's petition is vague with regard to the amount of damages she is seeking. *See* Exhibit A at p. 1. However, upon receiving the petition, Defendant requested clarification from Plaintiff pertaining to the amount of damages she is seeking and further requested confirmation through a proposed stipulation that the Plaintiff's damages did not exceed \$75,000.00. While Plaintiff, through her counsel, advised that there was nothing to suggest the damages would exceed \$75,000.00, Plaintiff did not agree to the proposed stipulation. *See* Exhibit H. On November 16, 2020, Plaintiff served medical and billing records where past and future medical expenses total approximately \$143,712.00. *See* Exhibit I. After receipt of the records, Defendant again requested confirmation and stipulation regarding the amount in controversy from Plaintiff, which has not been provided. *See* Exhibit H. Given the records that Plaintiff produced, the estimate of damages that has been put at issue in this action by Plaintiff and the amount in controversy exceeds \$75,000.00.¹

B. Venue is Proper in This Division and in This District.

¹ *See Randle v. Pilot Travel Centers LLC*, No. 4:20-cv-00714, 2020 WL 2766133 *1 (S.D. Tex. May 28, 2020) (holding that under Texas law, Plaintiff cannot plead a specific amount of damages beyond the ranges defined in Texas Rule of Civil Procedure 47(c) and to conclusively establish the amount in controversy and avoid removal, plaintiff must file an affidavit, stipulation, or other statement limiting recovery alongside a petition).

6. Plaintiff filed this action in Harris County, Texas. The Houston Division of the Southern District of Texas encompasses Harris County, Texas. Thus, this district and division embrace the place where the state court action is pending. *See* 28 U.S.C. §1441(a).

III. Procedural Requirements for Removal

7. This Notice of Removal is filed within thirty days of the date on which Defendant was served a copy of an amended pleading, motion, order or other paper from which it may be ascertained that the case is one which is or has become removable and less than 1 year after commencement of the action. Thus, this Notice of Removal is timely. *See* 28 U.S.C. §§ 1446(b)(3) and 1446(c)(1).

8. Copies of all processes, pleadings, and orders have been filed separately with this Court. *See* 28 U.S.C. § 1446(a).

- Exhibit A: Plaintiff's Original Petition;
- Exhibit B: Citation issued to Ross Dress for Less, Inc.;
- Exhibit C: Notification of Service of Process;
- Exhibit D: Defendant's Original Answer;
- Exhibit E: Docket Sheet;
- Exhibit F: List of all Counsel of Record/Parties; and
- Exhibit G: Index of Matters being filed.

9. A copy of this Notice of Removal will be filed with the Harris County District Clerk's office and served on the Plaintiff promptly. *See* 28 U.S.C. § 1446(d); *see also Nixon v. Wheatley*, 368 F. Supp. 2d 635, 640 (E.D. Tex. 2005) (Crone, J).

10. The filing fee has been paid to the Clerk.

11. A jury fee was paid in state court, and Defendant hereby requests a jury trial in this cause of action.

IV. Prayer

12. WHEREFORE, PREMISES CONSIDERED, Defendant Ross Dress for Less, Inc. prays that the above-styled action now pending in the 164th Judicial District Court of Harris County, Texas be removed there from, to this Honorable Court.

13. This Notice of Removal is filed subject to and without waiver of any defenses or objections to Plaintiff's Original Petition as allowed by the Federal Rules of Civil Procedure or by any applicable law.

Respectfully submitted,

GERMER PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been duly served on the following counsel through the Court's CM/ECF system and facsimile on the 20th day of November, 2020.

Via facsimile and e-serve
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